38 S. E. 912, and in *Mugge* v. *Tampa Waterworks,* 52 Fla. 371, 6 L. R. A. (N. S.) 1171, recovery was had on the theory of tort. This last ground, while it offers escape from the privity necessary to a contract action, has not met with approval by the courts generally. The inequity of allowing the negligent public service company to go free from liability for its failure to render service for which it receives large compensation is noticed by the court in the principal case; but the remedy is to be obtained, the court says, not "by a violation of the long-established legal principles, or by remaking the contract between the parties," but by legislation "designed to protect the public against the reckless granting of one-sided franchises under which the public has but little recognition." A convenient summary of authorities on this much controverted question is afforded by the case of *Ancrum* v. *Camden Water, etc. Co.,* 82 S. C. 284, 21 L. R. A. (N. S.) 1029. This general subject has received exhaustive treatment in two articles found in earlier numbers of this Review: "The Liability of Water Companies for Fire Losses," by Edson R. Sunderland, 3 MICH. L. REV. 442; and "The Liability of Water Companies for Fire Losses—Another View," by Albert Martin Kales, 3 MICH. L. REV. 501.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF THIRD PARTY.—Plaintiff went for a pleasure ride with X in the latter's automobile, and as they drove across a street intersection the machine was struck by a street car operated by defendant's servants. The proof showed that defendant was negligent, and also that X, who was driving the machine, was contributorily negligent. Plaintiff was injured and brought suit. *Held* that the negligence of the driver could be imputed to plaintiff, and that it barred her recovery. *Colborne* v. *Detroit United Ry.,* (Mich. 1913) 143 N. W. 32.

The case is against the great weight of authority in this country. The doctrine that the negligence of a third party can be imputed to one injured in a case of this kind, was first laid down in the case of *Thorogood* v. *Bryan,* 8 C. B. 115, and was there based on the ground that the plaintiff had in some way identified himself with the third party, whose contributory negligence must be considered the plaintiff's own. This case was criticized in *The Milan,* Lush. 388, and was finally expressly overruled in *The Bernina,* L. R. 12 P. D. 58, so the doctrine is no longer law in England. The American States have almost universally rejected the doctrine, declaring *Thorogood* v. *Bryan* to be decided contrary to both reason and justice. *Hot Springs St. R. Co.* v. *Hildreth,* 72 Ark. 572; *Met. St. R. Co.* v. *Powell,* 89 Ga. 601; *W. St. L. & P. R. R. Co.* v. *Shacklet,* 105 Ill. 364; *Nisbet* v. *Garner,* 75 Iowa 314, 1 L. R. A. 752; *L. C. & L. R. R. Co.* v. *Case's Adm'r,* 9 Bush (Ky) 728; *State of Maine* v. *B. & M. R. Co.,* 80 Me. 430; *Randolph* v. *O'Riordan,* 155 Mass. 331; *Chadbourne* v. *Springfield St. Ry.,* 199 Mass. 574, 85 N. E. 737; *Follman* v. *Mankato,* 35 Minn. 522; *A. & V. Ry. Co.* v. *Davis,* 69 Miss. 444; *Bennett* v. *N. J. R. R. & T. Co.,* 36 N. J. L. 225; *Chapman* v. *New Haven R. Co.,* 19 N. Y. 341; *Farley* v. *W. & N. C. R. Co.,* 3 Pennewill (Del.) 581, 52 Atl. 543; *Carlisle* v. *Brisbane,* 113 Pa. 544; *G. H. & S. A. Ry. Co.* v. *Kutac,* 72 Tex. 643; *Little* v. *Hackett,* 116 U. S. 366. The rule is different where both the

plaintiff and the third party are engaged in a common enterprise, *Payne* v. *C. R. I. & P. R. Co.*, 39 Iowa 523, and a distinction has sometimes been attempted to be made between riding in a public, and riding in a private carriage, but this latter idea is not generally sanctioned or heeded. *Mosterson* v. *N.Y.C.& H. R.R.Co.*,84 N.Y. 247; *Cuddy* v. *Horn*, 46 Mich. 596. In accord with the principal case are *Whitaker* v. *City of Helena*, 14 Mont. 124; *Omaha & Republican Valley R. Co.* v. *Talbot*, 48 Neb. 627; *Carlisle* v. *Sheldon*, 38 Vt. 440.

PRINCIPAL AND SURETY—CO-SURETIES DEFINED—CONTRIBUTION.—Several surety companies were bound by separate bonds on account of the same principal and to the same obligee. The bonds were all alike and each company limited its liability under them, in event of default on the part of the principal, to such proportion of the loss sustained by the obligee as the penalty named in the bond bore to total amount of bonds furnished to the obligee by the principal. The principal deposited collateral security with one of the surety companies to indemnify it against any loss which it might sustain on its bond. *Held*: The relationship of co-surety did not exist between the several companies and none of the other companies was entitled to any of the benefit of this security. *Assets Realization Co.* v. *American Bonding Co.* (Ohio 1913) 102 N. E. 719.

As a general rule sureties who undertake for the same principal and for the same debt are co-sureties although they are bound by separate instruments. *Deering* v. *Earl of Winchelsea*, 2 Bos. & Pul. 270; *Houck* v. *Graham*, 106 Ind. 195, 6 N. E. 594, 55 Am. St. Rep. 727; *Robinson* v. *Boyd*, 60 Ohio St. 57, 53 N. E. 494. The same rule has been applied in the case of surety companies, *National Surety Co.* v. *Di Marsico*, 105 N. Y. Sup. 272. But where the obligations are wholly distinct things, as a replevin bond and an appeal bond, though arising from the same principal indebtedness, the parties are not co-sureties. *Rosenbaum* v. *Goodman*, 78 Va. 121. In the principal case the court bases its decision entirely upon the provision in each bond limiting the liability of each company to its proportionate share of the total loss. This contract between the surety and the obligee curtails the latter's common law right to recover the entire amount of the loss from one surety and would seem to make contribution among the sureties unnecessary. The court holds that the right of contribution is destroyed by this provision and this, in its opinion, goes to the essence of the relation of co-suretyship; that the existence of the right of contribution is the test as to whether the parties are co-sureties, and there being no such right in this case all of the other rights of the sureties among themselves are absent. That the several companies assumed entirely separate and distinct obligations and no legal or equitable duty was owed by one to the other. There may be some doubt as to whether this result should follow from a contract entirely between the surety and the obligee, but the case is of interest in defining the rights of several sureties on such limited bonds.

PRINCIPAL AND SURETY—DISCHARGE OF SURETY—MISTAKE.—Several sureties executed a bond for the faithful performance of the terms of a lease by the principal. After the execution of the bond the name of one of the sure-